

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMPERSAND PUBLISHING, LLC d/b/a
Santa Barbara News-Press,

Petitioner/Cross-Respondent,

NATIONAL LABOR RELATIONS
BOARD,

Respondent/Cross-Petitioner,

GRAPHICS COMMUNICATIONS
CONFERENCE OF THE
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Intervenor for
Respondent/Cross-Petitioner,

CASE NO. 15-1074, 15-1130

31-CA-28589 et al

**MOTION TO STRIKE PAGES 9-10 OF
AMPERSAND’S REPLY BRIEF**

Comes now, Intervenor GRAPHICS COMMUNICATIONS CONFERENCE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and respectfully moves this Court to strike portions of Petitioner/Cross-Respondent AMPERSAND PUBLISHING, LLC’s brief purporting to allude to material not found in the record developed before the NLRB in this case. In particular, the Union requests that this Court strike or disregard Ampersand’s references to media articles it discusses on pages 9-10 of its reply brief, to wit:

1. A reference to a March, 2008 article in the Santa Barbara Independent titled “*News-Press, Union Negotiations Crawling Along Slow and Unsteady*”¹. (Reply brief, p. 10), authored by one Chris Meagher (“Meagher” article).

2. Two more articles from the Santa Barbara Independent, one published in 2012 and the second in 2016, relating to this Court’s 2012 decision in *Ampersand I*, authored by Melinda Burns, and Ms. Burns and Dawn Hobbs, respectively (Reply, p. 10, and footnote 4).

**AMPERSAND’S REFERENCES TO MATERIALS OUTSIDE THE
RECORD ARE IMPROPER AND MUST BE STRICKEN**

Ampersand’s references to extra-record materials purporting to discuss the facts of this case are antithetical to this Court’s task of reviewing the NLRB’s decision to determine if “substantial evidence” supports that decision “upon reviewing the record as a whole.” *DirecTV, Inc. v. NLRB*, 837 F.3d 25 (D.C. Cir. 2016), citing *Tenneco Auto., Inc. v. NLRB*, 716 F.3d 640, 646-47, 405 U.S. App. D.C. 73 (D.C. Cir. 2013). Accordingly, in administrative agency decision review cases such as this one, this Court and other Courts of Appeals have stricken materials outside the administrative record presented or referred to by the parties. E.g., *Pennsylvania Transformer Tech., Inc. v. NLRB*, 254 F.3d 217, 225 n.4 (D.C. Cir. 2001) (denying motion to supplement record before the Court where party failed to adduce evidence at issue before the Board);

¹ Ampersand’s reference erroneously quotes the title as including the word “Steady”, when the correct word in the title is “Unsteady”.

Appalachian Power Co. v. EPA, 135 F.3d 791, 799 fn.14 1001 (D.C. Cir. 1998); *NLRB v. Winn-Dixie Stores, Inc.*, 410 F.2d 1119, 1121 n.1 (5th Cir. 1969) (granting motion to strike documents not introduced into evidence from the employer's brief). For that reason, this Court should strike or disregard all references to the three items listed above.

**THE IMPROPERLY CITED ITEMS HAVE NO BEARING ON THIS
APPEAL**

Petitioner's references to the Meagher article suggest that the Union's chief negotiator, Nick Caruso, stated to the press that the "heart of the matter" in bargaining with Ampersand was "journalistic ethics." (Reply brief, p. 10). Regardless of the vague and inert character of this alleged statement, and in addition to the impropriety of Ampersand's citation as demonstrated above, the article's content reveals that Ampersand – but not the Meagher article -- incorrectly attributes that statement to Mr. Caruso. The portion of the article in quotes and italics in Ampersand's reply brief is *not* in quotes at all in the article, and there is no suggestion in the article that Mr. Caruso made any such statement. Without such attribution, even apart from Ampersand's venture outside the administrative record, there is no valid basis for this Court to consider the article, which was available to Petitioner prior to the hearing before ALJ Anderson.

By contrast, the two other articles improperly alluded to by Ampersand were published long *after* the evidentiary record before the ALJ was closed. Moreover, the authors of those articles – reporters discharged by the *News-Press* in 2006 and 2007 -- were not agents of the Union at the time of publication. Finally, any expression of

displeasure or disagreement with this Court's *Ampersand I* decision has absolutely no bearing on the issues now properly before this Court.

The NLRB has informed the undersigned that it supports this motion. Petitioner Ampersand opposes this motion.

CONCLUSION

Upon the foregoing, Intervenor Graphics Communications Conference of the International Brotherhood of Teamsters respectfully requests that this Court strike or disregard all references to the three articles described in this motion.

Dated this 29th day of November, 2016.

By: /s/

IRA L. GOTTLIEB (SBN 103236)
BUSH GOTTLIEB
500 North Central Avenue, Suite 800
Glendale, California 91203-3345
Telephone: (818) 973-3200
Facsimile: (818) 973-3201

Attorneys for Intervenor GRAPHICS
COMMUNICATIONS CONFERENCE OF
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2016, copies of the foregoing **MOTION TO STRIKE PAGES 9-10 OF AMPERSAND'S REPLY BRIEF** was served on the following counsel of record through the CM/ECF system if they are registered users, or, if they are not, by serving a true and correct copy at the addresses listed below:

Linda Dreeben, Esq., Deputy Associate General Counsel: appellatecourt@nlrb.gov

Julie Broido, Esq., Supervisory Attorney: julie.broido@nlrb.gov

Micah Jost, Esq., micah.jost@nlrb.gov

Carl Dawson Michel, Senior Attorney: cmichel@michellawyers.com,
cayala@michellawyers.com, hvillegas@michellawyers.com, lquesada@michellawyers.com
ABarvir@michellawyers.com

/s/IRA L. GOTTLIEB

IRA L. GOTTLIEB